

**COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND  
SUBSTANCE ABUSE SERVICES**

**Rules Committee Minutes**

**Clarion Hotel State Capital  
320 Hillsborough Street  
Raleigh, NC 27603**

**Thursday, January 27, 2011**

Attending:

**Rules Committee Members:** Jerry Ratley, Jennifer Brobst, Dr. Richard Brunstetter, Debra Dihoff, Cindy L. Ehlers, Matthew Harbin, Pamela Poteat, Don Trobaugh, David R. Turpin

**Excused Absence:** John R. Corne, Emily Moore, Larry Pittman

**Other Absences:** Dr. James W. Finch, Thomas Fleetwood, Carl W. Higginbotham

**Division Staff:** Steven E. Hairston, W. Denise Baker, Amanda J. Reeder, Marta Hester, Andrea Borden

**Others:** Betty Gardner, Stephanie Alexander, Elizabeth Albiston, Bob Hedrick, Susan Pollitt

**Call to Order:**

Jerry Ratley, Chairman, called the meeting to order at 2:00 pm. Mr. Ratley read the Ethics Reminder and asked if any members had a conflict of interest or appearance of conflict with respect to any matters coming before the Rules Committee. There were none.

**Approval of Minutes:**

*Upon motion, second, and unanimous vote, the Rules Committee approved the minutes of the July 21, 2010 Rules Committee Meeting.*

**Proposed Amendment of 10A NCAC 27G .0813 – Waiver of Licensure Rules**

Stephanie Alexander, Chief, Mental Health Licensure Section, NC Division of Health Service Regulation (DHSR), gave the presentation on the proposed amendment of Rule 10A NCAC 27G .0813. Ms. Alexander stated that the proposed amendments would ensure timely processing of waiver renewal requests as well as ensure that waivers relating to physical plant issues are effective for the duration of the license held by the owner requesting the waiver. The proposed rule was presented to the Rules Committee for approval for review by the full Commission.

The Rules Committee expressed concern regarding the indefinite period of the waiver for the physical building design and equipment as set forth in paragraph (f). Debra Dihoff, Commission member, recommended that the language be modified to limit those waivers to a period not to exceed 10 years.

*Upon motion, second, and unanimous vote, the Rules Committee approved the proposed amendment of Rule 10A NCAC 27G .0813, as further amended, to be forwarded to the full Commission.*

### **Proposed Adoption of 10A NCAC 27G .0105 – General Definitions**

Stephanie Alexander presented the proposed adoption of Rule 10A NCAC 27G .0105. The Secretary of the NC Department of Health and Human Services has the statutory responsibility of licensing facilities. N.C.G.S. §122C-23 sets forth several situations in which the DHSR is not allowed to issue a license to a facility, including, but not limited to, circumstances when the owner, principal or affiliate of the facility was in the same capacity with another facility that was issued certain penalties had its license revoked. Ms. Alexander informed the Committee that certain terms cited in the statute were not defined, which has made it difficult for the DHSR to enforce the statute. The proposed adoption is intended to ensure that the DHSR is able to properly enforce the statute when licensing facilities for the mh/dd/sa population. The proposed adoption was presented to the Rules Committee for approval for review by the full Commission.

*Upon motion, second, and unanimous vote, the Rules Committee approved the proposed adoption of Rule 10A NCAC 27G .0105 as presented to be forwarded to the full Commission.*

### **Proposed Amendment of 10A NCAC subchapter 26D: NC Department of Correction Standards for Mental Health and Mental Retardation – Department of Correction**

#### **Response**

Betty Gardner, Senior Nurse Clinician and Quality Improvement Coordinator, NC Department of Correction (DOC), presented the DOC Response to proposed amendments of Rules 10A NCAC, Subchapter 26D. The Commission provided the DOC with an opportunity to review the proposed changes prior to promulgation, as required by N.C.G.S. §148-19(d). The Division sent the rules to the DOC following the Commission's approval of the rules at its August 2010 meeting.

The DOC response to the proposed adoptions and amendments specifically addressed 14 rules. The Rules Committee discussed the response from DOC regarding those 14 rules in order to send a recommendation to the full Commission.

The following are recommendations from the Rules Committee members regarding the DOC response:

#### **Rule 10A NCAC 26D .0103:**

The Committee recommended changing (26), the definition for "Licensed Clinician" to include, "or individuals who are license eligible, not to exceed 13 months". The Committee believed that changing that definition would address the DOC concerns regarding (7), the definition of "Clinician", and (59), the definition of "Responsible Clinician".

The Committee recommended changing (37), the definition for "Outpatient Service" by striking the word "regular".

The Committee recommended changing (60), the definition for "Restraint", by striking most of the original language, in order to reflect that it is not to be used for therapeutic purposes. The Committee recommended including a reference to Rule .1203, which further outlines the requirements and uses of restraint.

The Committee recommended changing (61), the definition for "Seclusion", by striking most of the original language, in order to reflect that it is not to be used for therapeutic purposes. The Committee recommended including a reference to Rule .1202, which further outlines the requirements and uses of seclusion.

The Committee recommended striking the language of (62), the definition of “Serious Incident” and removing the definition from the rules.

Rule 10A NCAC 26D .0501:

The Committee recommended no change to Rule 10A NCAC 26D .0501.

Rule 10A NCAC 26D .0704:

The Committee asked staff to contact the NC Department of Justice and inquire about the appropriate statutory references for protecting confidentiality of client records. The Committee recommended dropping the language in Rule 10A NCAC 26D .0704(j) regarding confidentiality of records until staff receives guidance from the Department of Justice.

Rule 10A NCAC 26D .0803:

The Committee recommended changing the language within Rule 10A NCAC 26D .0803(c) to clarify that inmates detected through the health screening process with a possible mental illness or mental retardation requiring further evaluation shall be referred within 24 hours to a licensed clinician who will be responsible for initiation of the assessment or the treatment planning process.

Rule 10A NCAC 26D .0902:

The Committee recommended no change to Rule 10A NCAC 26D .0902.

Rule 10A NCAC 26D .0904:

The Committee recommended leaving the rule as written and asking the Commission to address the DOC concerns at its next meeting.

Rule 10A NCAC 26D .0906:

The Committee recommended changing the language in Rule 10A NCAC 26D .0906(d) to reflect that families may be notified by the DOC of the transfer, but the new language does not require notification via telephone.

Rule 10A NCAC 26D .1101:

The Committee recommended striking the language, “*for the incorporation of new psychotropic medications.*” in Rule 10A NCAC 26D .1101(c).

Rule 10A NCAC 26D .1104:

The Committee recommended adding the term “residential” to the language in Rule 10A NCAC 26D .1104(a).

Rule 10A NCAC 26D .1202:

- The Committee recommended that the language in Rule 10A NCAC 26D .1202(f)(4) be changed to clarify that initial orders for seclusion may not exceed 24 hours.

- The Committee recommended that the language in Rule 10A NCAC 26D .1201(g)(1) be changed to remove language relating to “planned” and “emergency” seclusion.
- Regarding Rule 10A NCAC 26D .1202(j) the Committee felt that the change to .1202(f)(4) addressed the DOC concern and recommended no changes to that language.

Rule 10A NCAC 26D .1203:

The Committee recommended changing the language in Rule 10A NCAC 26D .1203(f)(4) to restrict the orders for restraint for inmates under the age of 18 to two hours.

Rule 10A NCAC 26D .1205:

The Committee recommended changing the language in Rule 10A NCAC 26D .1205(f) to reflect that families may be notified by the DOC of the transfer, but the new language does not require notification via telephone.

Rule 10A NCAC 26D .1206:

The Committee recommended changing the language in Rule 10A NCAC 26D .1206(h) to reflect that families may be notified by the DOC of the transfer, but the new language does not require notification via telephone.

Rule 10A NCAC 26D .1207:

The Committee recommended changing the language in Rule 10A NCAC 26D .1207(9) to reflect that families may be notified by the DOC of the transfer, but the new language does not require notification via telephone.

***Upon motion, second, and unanimous vote the Rules Committee approved the proposed amendments, with recommended changes, to 10A NCAC 26D to be forwarded to the full Commission.***

**Public Comment**

There were no public comments.

**There being no further business, the meeting adjourned at 4:55 p.m.**